

Fiscal Notes – General, Capital, and Incarceration

§ 120-36.7. Long-term fiscal notes.

(a) Budget Outlook; Proposed Legislation. – Every fiscal analysis of the State budget outlook shall encompass the upcoming five-year period. Every fiscal analysis of the impact of proposed legislation on the State budget shall estimate the impact for the first five fiscal years the legislation would be in effect.

(b) Proposed State Buildings. – Upon the request of a member of the General Assembly, the Fiscal Research Division shall prepare a fiscal analysis of proposed legislation to appropriate funds for a State building. The analysis shall estimate the projected maintenance and operating costs of the building for the first 20 fiscal years after it is completed.

(c) Proposed New Programs. – Upon the request of a member of the General Assembly, the Fiscal Research Division shall prepare a fiscal analysis of proposed legislation to create a new State program. The analysis shall identify and estimate all personnel costs of the proposed new program for the first five fiscal years it will operate. The analysis shall also include a five-year estimate of space requirements, an indication of whether those requirements can be satisfied using existing State-owned facilities, and estimated costs of occupying leased space where State-owned space is not available.

(d) Proposed Increases in Incarceration. – Every bill and resolution introduced in the General Assembly proposing any change in the law that could cause a net increase in the length of time for which persons are incarcerated or the number of persons incarcerated, whether by increasing penalties for violating existing laws, by criminalizing behavior, or by any other means, shall have attached to it at the time of its consideration by the General Assembly a fiscal note prepared by the Fiscal Research Division. The fiscal note shall be prepared in consultation with the Sentencing Policy and Advisory Commission and shall identify and estimate, for the first five fiscal years the proposed change would be in effect, all costs of the proposed net increase in incarceration, including capital outlay costs if the legislation would require increased cell space. If, after careful investigation, the Fiscal Research Division determines that no dollar estimate is possible, the note shall contain a statement to that effect, setting forth the reasons why no dollar estimate can be given. No comment or opinion shall be included in the fiscal note with regard to the merits of the measure for which the note is prepared. However, technical and mechanical defects may be noted.

The sponsor of each bill or resolution to which this subsection applies shall present a copy of the bill or resolution with the request for a fiscal note to the Fiscal Research Division. Upon receipt of the request and the copy of the bill or resolution, the Fiscal Research Division shall prepare the fiscal note as promptly as possible. The Fiscal Research Division shall prepare the fiscal note and transmit it to the sponsor within two weeks after the request is made, unless the sponsor agrees to an extension of time.

This fiscal note shall be attached to the original of each proposed bill or resolution that is reported favorably by any committee of the General Assembly, but shall be separate from the bill or resolution and shall be clearly designated as a fiscal note. A fiscal note attached to a bill

or resolution pursuant to this subsection is not a part of the bill or resolution and is not an expression of legislative intent proposed by the bill or resolution.

If a committee of the General Assembly reports favorably a proposed bill or resolution with an amendment that proposes a change in the law that could cause a net increase in the length of time for which persons are incarcerated or the number of persons incarcerated, whether by increasing penalties for violating existing laws, by criminalizing behavior, or by any other means, the chair of the committee shall obtain from the Fiscal Research Division and attach to the amended bill or resolution a fiscal note as provided in this section. (1991, c. 689, s. 340; 1993, c. 561, s. 21.)

Fiscal Notes - Actuarial

§ 120-114. Actuarial notes.

(a) Every bill, joint resolution, and simple or concurrent resolution introduced in the General Assembly proposing any change in the law relative to any State, municipal, or other retirement system, funded in whole or in part out of public funds, or any program of hospital, medical, disability, or related benefits provided for teachers and State employees, funded in whole or in part by State funds, shall have attached to it at the time of its consideration by any committee of either house of the General Assembly a brief explanatory statement or note which shall include a reliable estimate of the financial and actuarial effect of the proposed change in any such retirement system or program of hospital, medical, disability, or related benefits. This actuarial note shall be attached to the original of each proposed bill or resolution which is reported favorably by any committee of either house of the General Assembly, but shall be separate therefrom, shall be clearly designated as an actuarial note and shall not constitute a part of the law or other provisions or expression of legislative intent proposed by the bill or resolution.

(b) The author of each bill or resolution shall present a copy of the bill or resolution, with his request for an actuarial note, to the Fiscal Research Division which shall have the duty to prepare said actuarial note as promptly as possible. Actuarial notes shall be prepared and transmitted to the author or authors no later than two weeks after the request for the actuarial note is made, unless an extension of time is agreed to by the author or authors as being necessary in preparation of the note. Any person who signs an actuarial note knowing it to contain false information shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than six months, or both.

(c) The author of each bill or resolution shall also present a copy of the bill or resolution to any actuary employed by the retirement system, or to any actuary employed by a program of hospital, medical, disability, or related benefits provided for teachers and State employees, affected by the bill or resolution in question. Actuarial notes shall be prepared and transmitted to the author or authors of the measure no later than two weeks after the request for the actuarial note is received, unless an extension of time is agreed to by the author or authors as being necessary in preparation of the note. Any person who signs an actuarial note knowing it to contain false information shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than six months, or both. The provisions of this subsection

may be waived for any local government retirement or pension plans not administered by the State, and for any local government program of hospital, medical, disability, or related benefits for local government employees not administered by the State.

(d) The note shall be factual and shall, if possible, provide a reliable estimate of both the immediate effect and, if determinable or reasonably foreseeable, the long range fiscal and actuarial effect of the measure. If, after careful investigation, it is determined that no dollar estimate is possible, the note shall contain a statement to that effect, setting forth the reasons why no dollar estimate can be given. No comment or opinion shall be included in the actuarial note with regard to the merits of the measure for which the note is prepared. However, technical and mechanical defects may be noted.

(e) At any time any committee of either house reports any legislative instrument, to which an actuarial note or notes are attached at the time of committee consideration, with any amendment of such nature as would substantially affect the cost to or the revenues of any retirement system, or program of hospital, medical, disability, or related benefits for teachers and State employees, as stated in the actuarial note or notes attached to the measure at the time of such consideration, it shall be the responsibility of the chairman of the committee reporting such instrument to obtain from the Fiscal Research Division an actuarial note of the fiscal and actuarial effect of the change proposed by the amendment reported. Such actuarial note shall be attached to the report of the committee on the measure as a supplement thereto. A floor amendment to a bill or resolution to which an actuarial note was attached at the time of committee consideration of the bill or resolution shall not be in order, if the amendment affects the costs to or the revenues of a retirement system, or program of hospital, medical, disability, or related benefits provided for teachers and State employees, unless the amendment is accompanied by an actuarial note, prepared by the Fiscal Research Division, as to the actuarial effect of the amendment. (1977, c. 503, s. 3; 1985, c. 189; 1987 (Reg. Sess., 1988), c. 1091, s. 3; 1989, c. 261.)

Confidentiality – Requests to Agencies

§ 120-131.1. Requests from legislative employees for assistance in the preparation of fiscal notes and evaluation reports.

(a) A request, including any accompanying documents, made to an agency employee by a legislative employee of the Fiscal Research Division for assistance in the preparation of a fiscal note is confidential. An agency employee who receives such a request or who learns of such a request made to another agency employee of his or her agency shall reveal the existence of the request only to other agency employees of the agency to the extent that it is necessary to respond to the request, and to the agency employee's supervisor and to the Office of State Budget and Management. All documents prepared by the agency employee in response to the request of the Fiscal Research Division are also confidential and shall be kept confidential in the same manner as the original request, except that documents submitted to the Fiscal Research Division in response to the request cease to be confidential under this section when the Fiscal Research Division releases a fiscal note based on the documents.

(a1) A request, and any accompanying documents, made to an agency employee by a legislative employee of the Program Evaluation Division for assistance in the preparation of an evaluation report is confidential. The request and any accompanying documents are not "public records" as defined by G.S. 132-1. An agency employee who receives a request under this subsection or who learns of such a request made to another agency employee of his or her agency may reveal the existence of the request to other agency employees to the extent that it is necessary to respond to the request and to the agency employee's supervisor. All documents prepared by the agency employee in response to the request of a legislative employee of the Program Evaluation Division are confidential, shall be kept confidential in the same manner as the original request, and are not "public records" as defined in G.S. 132-1.

(b) As used in this section, "agency employee" means an employee or officer of every agency of North Carolina government or its subdivisions, including every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority, or other unit of government of the State or of any county, unit, special district, or other political subdivision of government.

(c) Violation of this section may be grounds for disciplinary action. (1995, c. 324, s. 8.1(a); c. 507, s. 8.2; 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2008-196, s. 1(b).)

Fiscal Notes - Local Governments

§ 120-30.44. Fiscal note defined.

For purposes of this Article, "fiscal note" means a realistic statement of the estimated effect on the expenditures or revenues of units of local government of implementing or complying with a proposed bill, resolution or rule. (1979, 2nd Sess., c. 1262, s. 4.)

§ 120-30.45. Fiscal note on legislation.

(a) Every bill and resolution introduced in the General Assembly proposing any change in the law that could increase or decrease expenditures or revenues of a unit of local government shall have attached to it at the time of its consideration by the General Assembly a fiscal note prepared by the Fiscal Research Division. The fiscal note shall identify and estimate, for the first five fiscal years the proposed change would be in effect, all costs of the proposed legislation. If, after careful investigation, the Fiscal Research Division determines that no dollar estimate is possible, the note shall contain a statement to that effect, setting forth the reasons why no dollar amount can be given. No comment or opinion shall be included in the fiscal note with regard to the merits of the measure for which the note is prepared. However, technical and mechanical defects may be noted.

(b) The sponsor of each bill or resolution to which this section applies shall present a copy of the bill or resolution with the request for a fiscal note to the Fiscal Research Division. Upon receipt of the request and the copy of the bill or resolution, the Fiscal Research Division shall prepare the fiscal note as promptly as possible. The Fiscal Research Division shall prepare the fiscal note and transmit it to the sponsor within two weeks after the request is made, unless the sponsor agrees to an extension of time.

(c) This fiscal note shall be attached to the original of each proposed bill or resolution that is reported favorably by any committee of the General Assembly, but shall be separate from the bill or resolution and shall be clearly designated as a fiscal note. A fiscal note attached to a bill or resolution pursuant to this subsection is not a part of the bill or resolution and is not an expression of legislative intent proposed by the bill or resolution.

(d) If a committee of the General Assembly reports favorably a proposed bill or resolution with an amendment that proposes a change in the law that could increase or decrease expenditures or revenues of a unit of local government, the chair of the committee shall obtain from the Fiscal Research Division and attach to the amended bill or resolution a fiscal note as provided in this section.

(e) The Office of State Budget and Management, the Department of Revenue, the Department of the State Treasurer, the Department of the State Auditor, the State department most directly concerned, and, where appropriate, officials of units of local government, upon the request of Fiscal Research Division, shall assist the Fiscal Research Division in the preparation of the fiscal note.

(f) Copies of fiscal notes prepared by the Fiscal Research Division shall be furnished to the sponsor of the bill or resolution, the chairmen of the Local Government Committees, and the chairmen of the Appropriations, Finance, Rules, or the Senate Ways and Means Committees as appropriate. (1979, 2nd Sess., c. 1262, s. 5; 1995, c. 415, s. 6; 2000-140, s. 93.1(a); 2001-424, s. 12.2(b).)

Fiscal Notes – Proposed Rules

§ 150B-21.4. Fiscal notes on rules.

(a) State Funds. – Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would require the expenditure or distribution of funds subject to the State Budget Act, Chapter 143C of the General Statutes it must submit the text of the proposed rule change and a fiscal note on the proposed rule change to the Director of the Budget and obtain certification from the Director that the funds that would be required by the proposed rule change are available. The fiscal note must state the amount of funds that would be expended or distributed as a result of the proposed rule change and explain how the amount was computed. The Director of the Budget must certify a proposed rule change if funds are available to cover the expenditure or distribution required by the proposed rule change.

(a1) DOT Analyses. – In addition to the requirements of subsection (a) of this section, any agency that adopts a rule affecting environmental permitting of Department of Transportation projects shall conduct an analysis to determine if the rule will result in an increased cost to the Department of Transportation. The analysis shall be conducted and submitted to the Board of Transportation before the agency publishes the proposed text of the rule change in the North Carolina Register. The agency shall consider any recommendations offered by the Board of Transportation prior to adopting the rule. Once a rule subject to this subsection is adopted, the Board of Transportation may submit any objection to the rule it may have to the Rules Review Commission. If the Rules Review Commission receives an

objection to a rule from the Board of Transportation no later than 5:00 P.M. of the day following the day the Commission approves the rule, then the rule shall only become effective as provided in G.S. 150B-21.3(b1).

(b) Local Funds. – Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would affect the expenditures or revenues of a unit of local government, it must submit the text of the proposed rule change and a fiscal note on the proposed rule change to the Office of the Governor as provided by G.S. 150B-21.26, the Fiscal Research Division of the General Assembly, the Office of State Budget and Management, the North Carolina Association of County Commissioners, and the North Carolina League of Municipalities. The fiscal note must state the amount by which the proposed rule change would increase or decrease expenditures or revenues of a unit of local government and must explain how the amount was computed.

(b1) Substantial Economic Impact. – Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would have a substantial economic impact and that is not identical to a federal regulation that the agency is required to adopt, the agency must obtain a fiscal note for the proposed rule change from the Office of State Budget and Management or prepare a fiscal note for the proposed rule change and have the note approved by that Office. If an agency requests the Office of State Budget and Management to prepare a fiscal note for a proposed rule change, that Office must prepare the note within 90 days after receiving a written request for the note. If the Office of State Budget and Management fails to prepare a fiscal note within this time period, the agency proposing the rule change may prepare a fiscal note. A fiscal note prepared in this circumstance does not require approval of the Office of State Budget and Management.

If an agency prepares the required fiscal note, the agency must submit the note to the Office of State Budget and Management for review. The Office of State Budget and Management must review the fiscal note within 14 days after it is submitted and either approve the note or inform the agency in writing of the reasons why it does not approve the fiscal note. After addressing these reasons, the agency may submit the revised fiscal note to that Office for its review. If an agency is not sure whether a proposed rule change would have a substantial economic impact, the agency may ask the Office of State Budget and Management to determine whether the proposed rule change has a substantial economic impact.

As used in this subsection, the term "substantial economic impact" means an aggregate financial impact on all persons affected of at least three million dollars (\$3,000,000) in a 12-month period.

(b2) Content. – A fiscal note required by subsection (b1) of this section must contain the following:

- (1) A description of the persons who would be affected by the proposed rule change.
- (2) A description of the types of expenditures that persons affected by the proposed rule change would have to make to comply with the rule and an estimate of these expenditures.
- (3) A description of the purpose and benefits of the proposed rule change.
- (4) An explanation of how the estimate of expenditures was computed.

(c) Errors. – An erroneous fiscal note prepared in good faith does not affect the validity of a rule. (1973, c. 1331, s. 1; 1979, 2nd Sess., c. 1137, s. 41.1; 1983, c. 761, s. 185; 1985, c. 746, s. 1; 1987, c. 827, s. 54; 1991, c. 418, s. 1; 1995, c. 415, s. 2; c. 507, s. 27.8(b); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-229, s. 6; 2005-276, s. 28.8(a); 2006-203, s. 124.)